

Terry Kilpatrick

EXHIBIT "1"

From: Moriarty, Matthew <Matthew.Moriarty@TuckerEllis.com>
Sent: Wednesday, August 03, 2011 11:30 AM
To: Don A. Ernst; Terry Kilpatrick
Cc: mjohnson@motleyrice.com; Thompson, Fred; Harry F. Bell; Carl@facslaw.com; Mike Kerensky; Dean, Richard; McDonough, Madeleine (SHB); Kaplan, Harvey L. (SHB); Rebecca Betts
Subject: deadlines

Gentlemen,

On Monday, after seeing our fact statement, you called to ask for an agreed extension on your response times to the anticipated dispositive and *Daubert* motions. You wanted one month, instead of the two weeks negotiated by the PSC in PTO #70, and then accepted by you in the separate scheduling order for this case (entered 11/30/2010). I told you I would not discuss this until we actually filed the motions, and until I conferred with my co-counsel, as well as liaison and co-defense counsel.

I note that no-one else has approached us about this issue, and you have been unsuccessful in every attempt to convince Judge Goodwin to change deadlines. Furthermore, while you are correct that we have been contemplating these motions for a long time, your side was well aware of the deadlines, our plans to file motions, and theoretically could have been planning accordingly. The depositions of Farley, Bliesner, Kenny, Somma, etc., etc. were taken awhile ago. Presumably you have read them and planned how to support their methodology. Translated: none of this is a shocking revelation either in timing or substance. And I have no idea whether you have to draft all these responses yourself; you are clearly not the only law firm whose case is impacted by the motions.

Having said all that, I have conferred with my colleagues. Here is our less than simple response. First, the Mylan defendants do not agree to your requested extension. You can avoid that hurdle by doing what they asked a long time ago- dismiss them.

Second, in light of everything that has happened in this case, including your behavior today at the Galanter deposition, my colleagues think I am crazy to offer you more time as a courtesy. Their patience has run out. I, however, am giving you another break.

The Actavis defendants are willing to have you approach Judge Goodwin with a proposal to extend your response deadline by one week (not two); we will not oppose such an extension. However, please recognize that we will only do that if it does not interfere with the Court's ability to manage the whole process without shattering the existing schedule. In other words, you can ask the court, and represent that we do not object so long as the remainder of the deadlines remain in place.

By the way, FRCP 26 protects communications with experts. The Rule is clear. I gave you the Heard letter because it had a lot of facts in it. I believe the Galanter letter is similar and so- if I understand the current spat correctly- am likely to yield on that one letter to him.

I think the meet and confer is done, right?

Enjoy all the reading material we filed.

Matthew P. Moriarty
Tucker Ellis & West LLP
1150 Huntington Building
925 Euclid Avenue
Cleveland, Ohio 44115-1414
Phone: 216-696-2276
Facsimile: 216-592-5009